# PA/FOIA INTERFACE

- FOIA
  - ANY PERSON FOR ANY REASON
  - AGENCY RECORDS
- PRIVACY
  - US CITIZENS/ LEGALLY ADMITTED ALIENS
  - FIRST PARTY REQUEST FOR ACCESS TO RECORDS CONTAINED IN A PA SYSTEM OF RECORDS

# TIME LIMITS

- FOIA
  - 20 WORKING DAYS
  - SOME AGENCIES ISSUE ACKNOW-LEDGEMENTS
- PRIVACY
  - STATUTE DOES NOT SPECIFY TIMEFRAME
  - RESPOND WITHIN 20 WORKING DAYS IF POSSIBLE

# FEES

- FOIA
  - OMB SETS UNIFORM FEE GUIDELINES FOR SEARCH, REVIEW, AND DUPLICATION
  - CATEGORY OF REQUESTER DETERMINES KINDS OF FEES CHARGED
- PRIVACY
  - DUPLICATION FEES ONLY
  - FEES USUALLY WAIVED

# IS IT PRIVACY? OR FOIA?

- DEPARTMENT OF JUSTICE SAYS TO PROCESS UNDER BOTH ACTS – NO MATTER WHAT ACT IS CITED
- MANY REQUESTERS DO NOT UNDERSTAND THE DIFFERENCE AND CITE TO ONE OR BOTH ACTS

# THINGS TO CONSIDER

- DOES IT CITE TO AN ACT?
- DOES THE REQUEST REASONABLY DESCRIBE THE RECORDS BEING SOUGHT?
- HOW ARE THE RECORDS FILED?
- IS THIS A FIRST PARTY OR THIRD PARTY REQUEST?

# PRIVACY ACT SYSTEMS OF RECORDS

- THE SYSTEMS NOTICE IDENTIFIES ANY EXEMPTION RULE
- EXCEPTION: (d)(5) – COMPILED IN ANTICIPATION OF LITIGATION
- MUST BE A FIRST PARTY REQUEST
- IF THE SYSTEM IS EXEMPT, THEN APPROPRIATE DENIAL MADE UNDER PA AND FILE IS THEN PROCESSED UNDER FOIA
- APPEAL RIGHTS GIVEN

# FOIA PROCESSING

- REVIEW DOCUMENT TO DETERMINE IF ANY INFORMATION REQUIRES WITHHOLDING UNDER ANY OF THE FOIA EXEMPTIONS
- RESPONSE LETTER SHOULD ADDRESS WHAT INFORMATION WAS WITHHELD AND GIVE APPEAL RIGHTS

# PRIVACY ACT SYSTEMS OF RECORDS NOTICE

- BLUEPRINT FOR THE KINDS OF RECORDS KEPT ON INDIVIDUALS
- RULEMAKING ESTABLISHES WHAT RECORDS ARE KEPT AND WHAT RECORDS QUALIFY FOR WITHHOLDING
- IDENTIFIES THE TIMEFRAME RECORDS ARE KEPT AND HOW THEY ARE RETRIEVED
- IDENTIFIES WHERE INFORMATION IS TAKEN TO COMPILE FILE

# FOIA REQUESTS

- MUST REASONABLY IDENTIFY RECORDS BEING SOUGHT SO A KNOWLEDGEABLE OFFICIAL OF AGENCY CAN LOCATE RECORDS
- CAN INCLUDE RECORDS CONTAINED IN A PA SYSTEM OF RECORDS

# WHO RESPONDS?

- FOIA
  - RELEASE AUTHORITY/ INITIAL DENIAL AUTHORITY
- PRIVACY ACT
  - SYSTEMS MANAGER OR PA OFFICIAL

# EXEMPTIONS

- FOIA
  - REVIEW DOCUMENT AND APPLY EXEMPTIONS
  - (b)(1) – CURRENTLY AND PROPERLY CLASSIFIED BY EXECUTIVE ORDER
  - (I.E., 12958)
- PRIVACY
  - EXEMPTIONS ARE ADDRESSED IN PA SYSTEMS NOTICE
  - SPECIFIC EXEMPTIONS
    - (k)(1) – SAME AS FOIA (b)(1)

# EXEMPTIONS

- FOIA
  - (b)(2): PERSONNEL RULES AND PRACTICES
    - HIGH (b)(2) – CIRCUMVENTION OF AN AGENCY RULE, ETC
    - TRIVIAL MATTERS
- PRIVACY
  - SIMILAR EXEMPTION IS (k)(6): PROTECTS TESTING OR EVALUATION MATERIALS

# EXEMPTIONS

- FOIA
  - EXEMPTION (b)(3): PERTAINS TO INFORMA-TION PROTECT-ED BY A STATUTE
- PRIVACY ACT
  - EXEMPTION (k)(3) – MAINTAINED IN CONNECTION WITH PROVIDING PROTECTIVE SERVICES TO THE PRESIDENT OF THE UNITED STATES

# EXEMPTIONS

- FOIA
  - EXEMPTION (b)(4): PERTAINS TO COMMER-CIAL/TRADE SECRET INFORMATION
- PRIVACY
  - THERE IS NO SIMILAR EXEMPTION
  - EXEMPTION (k)(4) PROTECTS STATISTICAL INFORMATION USED SOLELY AS STATISTICAL RECORDS

# EXEMPTIONS

- FOIA
  - (b)(5): INTER AGENCY OR INTRA AGENCY MEMOS OR LETTERS THAT WOULD NOT BE MADE AVAILABLE BY LAW TO A PARTY IN LITIGATION WITH THE AGENCY
- PRIVACY
  - (d)(5): DOES NOT HAVE THE FULL BREADTH OF EXEMPTION (b)(5) SINCE IT ONLY PERTAINS TO INFORMATION COMPILED IN ANTICIPATION OF LITIGATION

# EXEMPTIONS

- FOIA
  - (b)(6) – PROTECTS THE PERSONAL PRIVACY OF OTHERS
- PRIVACY
  - THERE IS NO PRIVACY EXEMPTION UNDER THE PRIVACY ACT
  - FILES SHOULD NOT COMMINGLE PERSONAL INFORMATION
  - RELY ON CASE LAW TO WITHHOLD INFORMATION THAT IS NOT ABOUT THE INDIVIDUAL

# EXEMPTIONS

- FOIA
  - (b)(7): PERTAINS TO RECORDS OR INFORMATION COMPILED FOR LAW ENFORCEMENT PURPOSES
- PRIVACY
  - THERE ARE SEVERAL PRIVACY EXEMPTIONS THAT APPLY.
  - (k)(2): PERTAINS TO INVESTIGATORY MATERIAL COM-PILED FOR LAW ENFORCEMENT PURPOSES (OTHER THAN EXEMPTION (j)(2))

# EXEMPTIONS

- (k)(5): INVESTIGATORY INFORMATION COMPILED SOLELY FOR THE PURPOSE OF DETERMINING SUITABILITY ETC FOR FEDERAL CIVILIAN EMPLOYMENT THAT WOULD REVEAL A CONFIDENTAL SOURCE

- (j)(2) – THIS IS A GENERAL PA EXEMPTION THAT PROTECTS INFORMATION MAINTAINED BY AGENCY OR COMPONENT WHOSE PRINCIPAL FUNCTION IS THE ENFORCEMENT OF CRIMINAL LAWS

# EXEMPTIONS

- FOIA
  - (b)(8): FINANCIAL/ BANKING
  - (b)(9) OIL WELLS
- PA
  - NO SIMILAR EXEMPTIONS

# OTHER PRIVACY ACT GENERAL EXEMPTION

- (j)(1): MAINTAINED BY CIA

# APPEALS/AMENDMENTS

- FOIA
  - Requesters can appeal the adequacy of search, no record responses, fees, denial of information
- PRIVACY
  - Requesters can appeal adverse determinations
  - Can seek amendment of “factual” information (not opinions)

# PENALTIES

- FOIA
  - ATTORNEY FEES AND LITIGATION COSTS
- PRIVACY
  - CIVIL AND CRIMINAL PENALTIES FOR MAINTAINING ILLEGAL PA SYSTEM OF RECORDS; WILLFULLY REQUESTS A RECORD UNDER FALSE PRETENSES; OR WILLFULLY DISCLOSES TO UNAUTHORIZED ENTITY

# PLAYING THE FOIA/PA GAME

- IDENTIFY THE REQUESTER
- REVIEW WHAT THE REQUEST IS FOR: AGENCY RECORDS? PA SYSTEM OF RECORDS?
- IF IT'S FOR AGENCY RECORDS – PROCESS USING FOIA EXEMPTIONS
- IF IT'S FOR RECORDS IN A PA SYSTEM OF RECORDS – REVIEW THE SYSTEMS NOTICE

# ADMINISTRATIVE RECORD

- MAKE SURE YOU ADVISE THE REQUESTER UNDER WHAT ACT(S) YOU ARE PROCESSING HIS/HER REQUEST
- DELINEATE ANY EXEMPTIONS CLAIMED
- GIVE APPEAL RIGHTS
- DELINEATE FEES/FEE WAIVER

# IN SUMMARY

- WHILE BOTH STATUTES ALLOW ACCESS TO INFORMA-TION, ENSURE YOU FOLLOW THEIR RULE-MAKING
- MAKE SURE YOUR SEARCHES ARE COMPLETE
- DON’T HESITATE TO CONTACT THE REQUESTER FOR CLARIFICATION OF HIS/HER REQUEST

# IN SUMMARY - CON'T

- MAKE SURE YOUR RESPONSE IS ACCURATE, TIMELY, AND COMPLETE
- THOROUGH EXPLANATIONS OF EXEMP-TION(S) CLAIMED MANY TIMES ELIMINATE APPEALS

# FINALLY

- BE A FRIEND FOR FOIA
- REMEMBER YOUR RECORDS DISPOSAL RULES DEFINE HOW LONG RECORDS ARE MAINTAINED
- DEVELOP A PASSION FOR PRIVACY

REMEMBER THE PA SYSTEMS NOTICE DRIVES THE TRAIN